

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

JOHN HANCOCK LIFE INSURANCE COMPANY,	:	
	:	Civil Action No. 05-11614 WGY
Plaintiff,	:	
	:	
v.	:	JURY TRIAL DEMANDED
VESTMONT LIMITED PARTNERSHIP, et al.,	:	
	:	
Defendants.	:	
	:	

**DEFENDANTS' MOTION IN LIMINE PURSUANT TO F.R.E. 408
TO PRECLUDE EVIDENCE OF OFFERS OF COMPROMISE**

Defendants/Counterclaim Plaintiffs (collectively “Defendants” or “Vesterra”) hereby submit this Memorandum of Law in support of their Motion *in Limine* for entry of an Order, pursuant to Federal Rule of Evidence 408, barring Plaintiff John Hancock Life Insurance Company (“John Hancock”) from introducing any evidence of purported admissions by Vesterra made in communications between Vesterra and John Hancock concerning settlement or compromise of the dispute between the parties.

INTRODUCTION

Federal Rule of Evidence 408 provides that “evidence of conduct or statements made in compromise negotiations is ... not admissible.” John Hancock has identified four exhibits relating to the parties’ communications during the summer of 2005 regarding obligations under the Loan Application and efforts to settle the dispute before a lawsuit was filed, and its employees have testified concerning related verbal discussions. Vesterra objects to the

admission of these settlement negotiations on the grounds that the relevant letters are inadmissible pursuant to Federal Rule of Evidence 408, as is any testimony respecting the subject matter of these letters and any verbal discussions related to settlement.¹

FACTUAL BACKGROUND

Beginning in June 2005, after John Hancock made a demand upon Vesterra for certain penalties if the loan did not close, and up until the filing of this lawsuit on August 3, 2005, Vesterra engaged in both oral and written communications with John Hancock in an effort to resolve the parties' dispute short of litigation. These communications began when James R. Koller, one of Vesterra's principals, received a letter from Thomas Rogers, Esq., of the law firm White & Williams, who was serving as an attorney for John Hancock.

As explained by Mr. Koller, "During the summer of 2005, I engaged in discussions with several John Hancock employees and attorneys, including Thomas Rogers, an attorney representing John Hancock. Beginning in May, 2005, all of my communications with John Hancock representatives were directed at an attempt to resolve any potential dispute and reach a compromise with John Hancock, and thus were statements covered by Federal Rule of Evidence 408." Affidavit of James R. Koller, executed March 13, 2006 (filed March 14, 2006) (Docket No. 27) ¶ 24.

However, John Hancock intends to introduce several of these written settlement communications as evidence at time of trial:

- a June 9, 2005 letter from Attorney Rogers to Mr. Koller (Ex. K)²;
- a June 20, 2005 letter from Mr. Koller to Attorney Rogers (Ex. AL);
- a July 8, 2005 letter from Attorney Rogers to Mr. Koller (Ex. O)³; and

¹ Vesterra does not object to evidence concerning the fact that Vesterra informed John Hancock that the Loan might not close, and that John Hancock informed Vesterra that it would consider this to be a breach of contract.

² This document is incorrectly identified by John Hancock as having been sent on June 9, 2004.

³ This document is incorrectly identified by John Hancock as having been sent on July 8, 2004.

- a July 15, 2005 letter from Mr. Koller to Attorney Rogers (Ex. AX).

Collectively, these documents will be referred to as the “Settlement Letters.” *See Exhibits A, B, C and D.*⁴

In addition, John Hancock has identified Attorney Rogers as a potential witness in this case, and may well intend to elicit verbal testimony concerning the subject matter of these letters or concerning verbal discussions related to settlement.

The language contained in these documents clearly demonstrates that the two sides were investigating the resolution of a potential dispute. For example, the June 9, 2005 letter from Attorney Rogers to Mr. Koller states as follows:

John Hancock has been advised through conversations with Mr. John Ferrie of John Hancock Real Estate Finance, Inc. that you have inquired as to Borrower’s exposure if it does not close the committed loan (“Loan”) when and as required under the Loan Commitment.

See Exhibit A. Mr. Koller’s June 20th letter was written in response to Attorney Rogers’ letter, and Attorney Rogers’ July 8th letter responded to Mr. Koller’s inquiries. *See Exhibits B and C,* respectively. Finally, Plaintiff’s Exhibit 96, which is an unsigned and unauthenticated document, is another response to Attorney Rogers, and contains another discussion of Vesterra’s thoughts on the dispute, as well as a possible remedy. *See Exhibit D.*

That series of correspondence makes clear that the parties were seeking to resolve a potential dispute and were discussing both issues of liability and damages. This applies as well to any similar verbal discussions during this time period.

LEGAL ARGUMENT

Rule 408 governs the admissibility of evidence of compromise offers or agreements in federal trials. *See McInnis v. A.M.F., Inc.*, 765 F.2d 240, 247 (1st Cir. 1985). *See also Young v.*

⁴ These documents are attached hereto as Exhibits A through D.

Verson Allsteel Press Co., 539 F. Supp. 193, 196 (E.D. Pa. 1982) (“It is well established that statements made for purposes of settlement negotiations are inadmissible.”) (citing *Playboy Enterprises, Inc. v. Chuckleberry Pub., Inc.*, 486 F. Supp. 414, 423 n.10 (S.D.N.Y. 1980), *aff’d*, 687 F.2d 563 (2d Cir. 1982)). The Settlement Documents⁵ were made for settlement purposes and are being offered against Vesterra, one of the parties here. The same is true of any verbal settlement discussions.

Rule 408 states:

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

Fed.R.Evid. 408.

“The primary purpose of Rule 408 is ‘promotion of the public policy favoring compromise and settlement of disputes’ that would otherwise be discouraged with the admission of such evidence. To further this goal, evidence that is otherwise probative is excluded from civil lawsuits.” *Manko v. United States*, 87 F.3d 50, 54 (2d Cir. 1996) (citing FRE 408, advisory committee notes). *See also* 2 Jack B. Weinstein & Margaret A. Berger, WEINSTEIN’S EVIDENCE 408[01] at 408-10 (1994) (policy behind Rule 408 is to encourage freedom of discussion with

⁵ The Settlement Letters clearly fall within the materials and statements included in the protections offered by Rule 408. *See Affiliated Mfrs., Inc. v. Aluminum Co. of America*, 56 F.3d 521 (3d Cir. 1995) (memoranda made in the course of settlement negotiations and used as basis for settlement figures was protected by Rule 408); *EEOC v. Gear Petroleum, Inc.*, 948 F.2d 1542 (10th Cir. 1991) (defendant’s letter to EEOC explaining its position in an age discrimination lawsuit was excluded).

regard to compromise). The United States Court of Appeals for the First Circuit has stated the following about Rule 408:

First, the rule illustrates Congress' desire to promote a public policy favoring the compromise and settlement of claims by insulating potential litigants from later being penalized in court for their attempts to first resolve their dispute out of court. Second, such evidence is of questionable relevance on the issue of liability or the value of a claim, since settlement may well reflect a desire for peaceful dispute resolution, rather than the litigants' perceptions of the strength or weakness of their relative positions

McInnis, 765 F.2d at 247.

Rule 408 has been interpreted as applicable to an actual dispute, or at least an apparent difference of view between the parties concerning the validity or amount of a claim. 2

WEINSTEIN'S EVIDENCE, *supra*, at 408-12. See also KENNETH S. BROWN ET AL., MCCORMICK ON EVIDENCE § 266, at 466 (John William Strong ed., 4th ed. 1992) (same). In fact, “[a]ll that is needed for Rule 408 to apply is an actual dispute, or at least an apparent difference of opinion between the parties as to the validity of a claim.” *Alpex Computer Corp. v. Nintendo Co., Ltd.*, 770 F. Supp. 161, 164 (S.D.N.Y. 1991) (citing *Dallas v. Aetna Life Ins. Co.*, 768 F.2d 1303, 1307 (1st Cir. 1985)). In the instant case, both sides clearly contemplated litigation.

In spite of this hard and fast rule, John Hancock intends to improperly introduce four separate exhibits, as well as the testimony of Attorney Rogers, that contain “evidence of conduct or statements made in compromise negotiations.” In the instant case, Mr. Koller made statements during the course of these settlement negotiations in an attempt to resolve a potential dispute with John Hancock and to help John Hancock understand Vesterra’s position. The public policy of favoring and encouraging settlements precludes the admission of the Settlement Letters.

Accordingly, the Settlement Letters should be barred from evidence, as should any testimony concerning the letters or concerning any verbal settlement discussions. To admit

them would unfairly prejudice Vesterra by admitting into evidence statements made in offer of compromise, in direct contradiction to the express provisions of Federal Rule of Evidence 408.

CERTIFICATE PURSUANT TO LOCAL RULE 7.1

The undersigned conferred with counsel for all parties in a good faith effort to resolve or narrow the issues contained in this motion

Respectfully submitted,

Dated: May 1, 2006

/s/ Robert D. Hillman

Steven J. Brooks (BBO # 059140)
Robert D. Hillman (BBO # 552637)
DEUTSCH WILLIAMS BROOKS
DeRENSIS & HOLLAND, P.C.
99 Summer Street
Boston, MA 02110-1213
Tele.: 617-951-2300

/s/ Howard D. Scher

Howard D. Scher (admitted *pro hac vice*)
C. Randolph Ross (admitted *pro hac vice*)
Brian J. McCormick, Jr.(admitted *pro hac vice*)
BUCHANAN INGERSOLL PC
1835 Market Street, Floor 14
Philadelphia, PA 19103
Tele.: 215-665-8700

Attorneys for Defendants/Counterclaim Plaintiffs
Vestmont Limited Partnership, Vestmont Limited
Partnership II, Vestmont Limited Partnership III and
Vesterra Corporation

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been filed electronically today, was sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and is available for viewing and downloading from the ECF system.

Dated: May 1, 2006

/s/ Brian J. McCormick, Jr.

Brian J. McCormick, Jr. (admitted *pro hac vice*)

EXHIBIT A

White and Williams LLP



1800 One Liberty Place
Philadelphia, PA 19103-7395
Phone: 215.864.7000
Fax: 215.864.7123

Thomas C. Rogers
Direct Dial: 215.864.7190
Direct Fax: 215.789.7690
rogerst@whiteandwilliams.com

June 9, 2004

Montgomery Square Partnership
1100 Avenel Boulevard
Avenel at Montgomery Square
North Wales, PA 19454
Attention: Mr. James R. Koller

**RE: John Hancock Life Insurance Company
Application For a First Mortgage Loan
No. 6518467 ("Loan Commitment")
Property: Avenel at Montgomery Square**

Dear Jim:

I write on behalf of our client, John Hancock Life Insurance Company ("John Hancock"), with regard to the above referenced Loan Commitment.

John Hancock has been advised through conversations with Mr. John Ferrie of John Hancock Real Estate Finance, Inc. that you have inquired as to the Borrower's exposure if it does not close the committed loan ("Loan") when and as required under the Loan Commitment.

This letter is to advise you that while John Hancock has been advised about the inquiry, John Hancock is not waiving or releasing the Borrower or any other responsible parties under the Loan Commitment from their obligations, liabilities and responsibilities under the Loan Commitment should Borrower fail to comply with its terms. Without limiting the applicability of other provisions in the Loan Commitment, reference is made to Paragraphs 21 and 30 of the Loan Commitment regarding the loss of the Application Fee, the Commitment Fee, the Processing Fee, the liability for all Costs and the further liability for such other damages, losses, costs and expenses suffered by John Hancock, including without limitation, those arising from the fact that, in reliance on the agreements of the Borrower contained in the Loan Commitment, John Hancock has allocated and set aside assets for the purpose of funding the Loan and has made commitments to third parties based thereon.

John Hancock will continue to proceed under the Loan Commitment as though the Loan committed to therein will close pursuant to its terms. As you are aware, the expiration of the "Rate Lock" is August 1, 2005. Under the Loan Commitment, numerous items are to be delivered to John Hancock, or me, no later than forty-five (45) days prior to the expiration of Rate Lock (by June 17, 2005). By way of example, the items to be delivered include the title

Allentown, PA • Cherry Hill, NJ • New York, NY • Paoli, PA
Paramus, NJ • Philadelphia, PA • Pittsburgh, PA • Wilmington, DE

Montgomery Square Partnership
June 9, 2005
Page 2

commitment under Paragraph 7(d), the survey under Paragraph 8(d), the Borrower requirements under Paragraph 9(a), the zoning and other matters required under Paragraph 10, the third party reports under Paragraph 13 and the insurance required under Paragraph 19. Additionally, we have not received comments to the draft loan documents which were sent to Mitchell Russell, Esquire by letter dated September 21, 2004.

Very truly yours,

WHITE AND WILLIAMS LLP

By:


Thomas C. Rogers

TCR:rb

cc: Jessica Y. Leveroni, Esquire
Mr. Timothy J. Malik
Mr. John Ferrie
Mitchell Russell, Esquire

White and Williams LLP

1800 One Liberty Place
 Philadelphia, PA 19103-7395
 Phone: 215.864.7000 Fax: 215.864.7123

Website: www.whiteandwilliams.com



Date: JUNE 9, 2005

FAX COVER LETTER

IMPORTANT! If an international number, please include the international access code (011), country code (e.g., "44" for United Kingdom), and City Code, if applicable (e.g., "1" for London; "2" for Brussels, etc.)

TO	COMPANY	PHONE NO.	FAX NO.
James Koller			215- 699- 9935
Mitch Russell, Esq.			215- 653- 0383
Jessica Leveroni, Esq.			617- 421- 4086
Timothy Mik			617- 572- 0266
John Ferrie			610- 941- 9872

From: Thomas C. Rogers

Direct Dial: 215.864.7190

Re: Home Loan - Aunel

Direct Fax: 215.789.7690

Comments: Jim: Please see the attached letter. Tom

ATTORNEY I.D. #: 133

FILE #: relin

FILE NAME:

This facsimile contains confidential information intended only for the use of the addressee(s) named above and may contain information that is legally privileged.

If you are not the addressee, or the person responsible for delivering it to the addressee, you are hereby notified that reading, disseminating or copying this facsimile is strictly prohibited. If you have received this facsimile by mistake, please immediately notify us by telephone and return the original message to us at the address above via Postal Service (we will reimburse postage). Thank you.

You should receive 3 page(s) including this page.
 If the transmission is incomplete, please call 215.864.7122, as soon as possible.

Originals: Not being sent

JH 00488

TRANSMISSION REPORT
*****(THU) JUN 9 2005 16:20
GWHITE AND WILLIAMS LLP

DOCUMENT #	TIME STORED	TIME SENT	DURATION	PAGE (S)	MODE	RESULT
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JUN 13 2005

WW

White and Williams LLP

1800 One Liberty Place
Philadelphia, PA 19103-7395
Phone: 215.864.7000 Fax: 215.864.7123Website: www.whiteandwilliams.com

Date: JUNE 9, 2005

FAX COVER LETTER

IMPORTANT! If an international number, please include the international access code (011), country code (e.g., "44" for United Kingdom), and City Code, if applicable (e.g., "1" for London; "2" for Brussels, etc.)

TO	COMPANY	PHONE NO.	FAX NO.
James Koller			215- 699- 9935
Mitch Russell, Esq.			215- 653- 0383
Jessica Levenoni, Esq.			617- 421- 4086
Timothy Malik			617- 572- 0206
John Feenie			610- 941- 9872

From: Thomas C. Rogers

Direct Dial: 215.864.7190

Re: Hancock LOAN - Amwel

Direct Fax: 215.789.7690

Comments: Jim: Please see the attached letter. Tom

ATTORNEY I.D. #: 133

JH 00489

FILE #: rdw/jw

FILE NAME:

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TRANSMISSION REPORT
*****(THU) JUN 9 2005 16:17
GWHITE AND WILLIAMS LLP

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3-AM

White and Williams LLP1800 One Liberty Place
Philadelphia, PA 19103-7395
Phone: 215.864.7000 Fax: 215.864.7123Website: www.whiteandwilliams.com

WW

Date: JUNE 9, 2005**FAX COVER LETTER**

IMPORTANT: If an international number, please include the international access code (011), country code (e.g., "44" for United Kingdom), and City Code, if applicable (e.g., "1" for London; "2" for Brussels, etc.)

TO	COMPANY	PHONE NO.	FAX NO.
James Koller			215- 699- 9935
Mitch Russell, Esq.			215- 653- 0383
Jessica Leventon, Esq.			617- 421- 4086
Timothy Malik			617- 572- 0266
John Ferrie			610- 941- 9872

From: Thomas C. Rogers

Direct Dial: 215.864.7190

Re: Harvard Loan - Aunel

Direct Fax: 215.789.7690

Comments: Jim: Please see the attached letter. Tom

ATTORNEY I.D. #: 133

JH 00490

FILE #: *rdw/jw*

FILE NAME:

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*****TRANSMISSION REPORT*****

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GWHITE AND WILLIAMS LLP

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115-200

White and Williams LLP

1800 One Liberty Place
Philadelphia, PA 19103-7395
Phone: 215.864.7000 Fax: 215.864.7123Website: www.whiteandwilliams.comDate: June 9, 2005

FAX COVER LETTER

IMPORTANT! If an international number, please include the international access code (011), country code (e.g., "44" for United Kingdom), and City Code, if applicable (e.g., "1" for London; "2" for Brussels, etc.)

TO	COMPANY	PHONE NO.	FAX NO.
James Koller			215- 699- 9935
Mitch Russell, Esq.			215- 653- 0383
Jessica Leonardi, Esq.			617- 421- 4086
Timothy Malik			617- 572- 0206
John Feurie			610- 941- 9872

From: Thomas C. Rogers

Direct Dial: 215.864.7190

Re: Hancock Loan - Amwal

Direct Fax: 215.789.7690

Comments: Jim: Please see the attached letter. Tom

ATTORNEY I.D. #: 133

JH 00491

FILE #: *rdw*

FILE NAME:

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*****TRANSMISSION REPORT*****

(THU) JUN 9 2005 16:17
GWHITE AND WILLIAMS LLP

DOCUMENT #	TIME STORED	TIME SENT	DURATION	PAGE (S)	MODE	RESULT
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JUN 11 2005



White and Williams LLP

1800 One Liberty Place
Philadelphia, PA 19103-7395
Phone: 215.864.7000 Fax: 215.864.7123Website: www.whiteandwilliams.comDate: JUNE 9, 2005

FAX COVER LETTER

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TO	COMPANY	PHONE NO.	FAX NO.
James Kollar			215- 699- 9935
Mitch Russell, Esq.			215- 653- 0383
Jessica Levedoni, Esq.			617- 421- 4086
Timothy Malik			617- 572- 0266
John Feurie			610- 941- 9872

From: Thomas C. Rogers

Direct Dial: 215.864.7190

Re: Harvard LOAN - tunnel

Direct Fax: 215.789.7690

Comments: Tom: PLEASE see the attached letter. Tom

ATTORNEY I.D. #: 133

JH 00492

FILE #: *rwjw*

FILE NAME:

This facsimile contains confidential information intended only for the use of the addressee(s) named above and may contain information that is legally privileged.

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TRANSMISSION REPORT

(THU) JUN 9 2005 16:16
GWHITE AND WILLIAMS LLP

DOCUMENT #	TIME STORED	TIME SENT	DURATION	PAGE (S)	MODE	RESULT
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DESTINATION	DST. TEL #
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White and Williams LLP

1800 One Liberty Place
Philadelphia, PA 19103-7395
Phone: 215.864.7000 Fax: 215.864.7123

Website: www.whiteandwilliams.com



Date: JUNE 9, 2005

FAX COVER LETTER

IMPORTANT! If an international number, please include the international access code (011), country code (e.g., "44" for United Kingdom), and City Code, if applicable (e.g., "1" for London; "2" for Brussels, etc.)

TO	COMPANY	PHONE NO.	FAX NO.
James Koller			215- 699- 9935
Mitch Russell, Esq.			215- 653- 0383
Jessica Levenoni, Esq.			617- 421- 4086
Timothy Mik			617- 572- 0266
John Ferrie			610- 941- 9872

From: Thomas C. Rogers

Direct Dial: 215.864.7190

Re: Hancock LOAN - Amwel

Direct Fax: 215.789.7690

Comments: Jim: PLEASE see the attached letter. Tom

ATTORNEY I.D. #: 133

JH 00493

FILE #: *relinjw*

FILE NAME:

This facsimile contains confidential information intended only for the use of the addressee(s) named above and may contain information that is legally privileged.

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EXHIBIT B

VESTERRA CORPORATION
C/o KOLLER KELLY LLC
1100 Avenel Boulevard
North Wales, PA 19454
(215) 616-0400
Fax (215) 699-9935

received
6/23/05

June 20, 2005

Thomas C. Rogers, Esquire
White and Williams LLP
1800 One Liberty Place
Philadelphia, PA 19103-7395

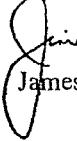
Re: John Hancock Life Insurance Company
Avenel at Montgomery Square

Dear Tom:

This letter is in response to your letter of June 9, 2005. As you pointed out in your letter, the outside date for Closing is August 1, 2005. The Application requires that we meet certain conditions in order to close the loan. Most significant among these conditions are the rental achievement requirements contained in condition 49. We are not, at this point, able to satisfy these conditions, and we have so informed John Ferrie and Tim Malik of this. The pace of leasing has been slower than we anticipated. We have also informed John and Tim that we are exploring all options at this point.

We are fully aware of our obligations under the Loan Application. We have deposited \$960,000 with John Hancock, and we think that amount far exceeds the amount required to compensate them for their Costs and damages. If you have any questions, please call me at 215-605-7770.

Sincerely,


James R. Koller

JH 00482

EXHIBIT C

White and Williams LLP

WW

1800 One Liberty Place
Philadelphia, PA 19103-7395
Phone: 215.864.7000
Fax: 215.864.7123

Thomas C. Rogers
Direct Dial: 215.864.7190
Direct Fax: 215.789.7690
rogers1@whiteandwilliams.com

July 8, 2004

Montgomery Square Partnership
1100 Avenel Boulevard
Avenel at Montgomery Square
North Wales, PA 19454
Attention: Mr. James R. Koller

**RE: John Hancock Life Insurance Company
Application For a First Mortgage Loan
No. 6518467 ("Loan Commitment")
Property: Avenel at Montgomery Square**

Dear Jim:

I received your letter of June 20, 2005 in response to my letter to you of June 9.

John Hancock understands from your letter of June 20 and other communications that the borrower will be unable to meet the rental achievement conditions in order to close the loan on August 1, 2005, the current Closing Date, due to slower than anticipated leasing. The borrower's concern that it might be unable to satisfy a term or condition of the Loan Commitment on the Closing Date was addressed at the time that the parties entered into the Loan Commitment. Loan Commitment Condition 50 enables the borrower to extend the Closing Date in order to meet any of its unsatisfied conditions, such as the rental achievement condition in Loan Commitment Conditions 16 and 49.

Loan Commitment Condition 50 permits up to six (6) thirty (30) day extensions of the Closing Date provided that no later than ten (10) business days prior to the then applicable Closing Date, John Hancock receives a written notice from the borrower of its election to extend the Closing Date. A cost of each thirty (30) day extension is an increase in the Loan's interest rate of 5 basis points. The tenth (10th) business day prior to the current Closing Date (August 1, 2005) is July 18, 2005. If the borrower fails to timely extend the Closing Date under Condition 50, the Closing Date will remain August 1 and failure to close on August 1 will result in John Hancock exercising its rights and remedies under the Loan Commitment, including as provided for in Paragraphs 21 and 30 thereof.

As expressed in my letter of June 9, it is John Hancock's position that if the borrower fails to close as and when required under the Loan Commitment, John Hancock will be entitled to enforce its rights and remedies, including retention of the Application Fee, the Commitment

Allentown, PA • Cherry Hill, NJ • New York, NY • Paoli, PA
Paramus, NJ • Philadelphia, PA • Pittsburgh, PA • Wilmington, DE

JH 00475

DOCS_PH 1761762v2

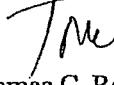
Montgomery Square Partnership
July 8, 2005
Page 2

Fee, the Processing Fee and recovery of its losses, expenses, damages and costs. The potential damages, losses, expenses and costs are in addition to the retention of the fees mentioned above.

John Hancock has not and is not waiving any of its rights and remedies should the borrower fail to close when and as required under the Loan Commitment.

Very truly yours,

WHITE AND WILLIAMS LLP

By: 
Thomas C. Rogers

TCR:rb
cc: Jessica Y. Leveroni, Esquire
Mr. Timothy J. Malik
Mr. John Ferrie

White and Williams LLP

1800 One Liberty Place
 Philadelphia, PA 19103-7395
 Phone: 215.864.7000 Fax: 215.864.7123

Website: www.whiteandwilliams.com



Date: July 8, 2005

FAX COVER LETTER

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TO	COMPANY	PHONE NO.	FAX NO.
James Koller	Montgomery Square Partnership		215-699-9935
Tim Malik	John Hancock		617-572-9699
Jessica Leveroni			617-572-9268
John Ferrie			610-941-9872

From: Thomas C. Rogers

Direct Dial: 215.864.7190

Re:

Direct Fax: 215.789.7690

Comments:

ATTORNEY I.D. #: 133

FILE # : 4639-512

FILE NAME:

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(FRI) JUL 8 2005 14:55
GWHITE AND WILLIAMS LLP

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4260484-340	7. 8 14:53	7. 8 14:53	1' 20"	3	ECM	OK

DESTINATION	DST. TEL #
90#1#12156999935	133#99990#1#12156999935

White and Williams LLP



1800 One Liberty Place
Philadelphia, PA 19103-7395
Phone: 215.864.7000 Fax: 215.864.7123

Website: www.whiteandwilliams.com

Date: July 8, 2005

FAX COVER LETTER

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From: Thomas C. Rogers

Direct Dial: 215.864.7190

Re:

Direct Fax: 215.789.7690

Comments:

ATTORNEY I.D. #: 133

JH 00478

FILE #: 4639-512

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*****(FRI) JUL 8 2005 14:56
GWHITE AND WILLIAMS LLP

DOCUMENT #	TIME STORED	TIME SENT	DURATION	PAGE (S)	MODE	RESULT
4260484-341	7. 8 14:53	7. 8 14:53	1' 07"	3	ECM	OK

DESTINATION	DST. TEL #
90#1#16175729268	133#99990#1#16175729268

White and Williams LLP



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 Philadelphia, PA 19103-7395
 Phone: 215.864.7000 Fax: 215.864.7123

Website: www.whiteandwilliams.com

Date: July 8, 2005

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From: Thomas C. Rogers

Direct Dial: 215.864.7190

Re:

Direct Fax: 215.789.7690

Comments:

ATTORNEY I.D. #: 133

JH 00479

FILE # : 4639-512

FILE NAME:

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(FRI) JUL 8 2005 15:13
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DOCUMENT #	TIME STORED	TIME SENT	DURATION	PAGE (S)	MODE	RESULT
4260484-344	7. 8 15:12	7. 8 15:12	1' 08"	3	ECM	OK

DESTINATION	DST. TEL #
90#1#16175729699	133#99990#1#16175729699

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Website: www.whiteandwilliams.com

Date: July 8, 2005

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TO	COMPANY	PHONE NO.	FAX NO.
James Koller	Montgomery Square Partnership		215-699-9935
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Jessica Leveroni			617-572-9268
John Ferrie			610-941-9872

From: Thomas C. Rogers

Direct Dial: 215.864.7190

Re:

Direct Fax: 215.789.7690

Comments:

ATTORNEY I.D. #: 133

JH 00480

FILE #: 4639-512

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TRANSMISSION REPORT

(FRI) JUL 8 2005 15:14
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DOCUMENT #	TIME STORED	TIME SENT	DURATION	PAGE (S)	MODE	RESULT
4260484-343	7. 8 15:11	7. 8 15:11	2' 00"	3	ECM	OK

DESTINATION	DST. TEL #
90#1#16109419872	133#99990#1#16109419872

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Website: www.whiteandwilliams.com



Date: July 8, 2005

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From: Thomas C. Rogers

Direct Dial: 215.864.7190

Re:

Direct Fax: 215.789.7690

Comments:

ATTORNEY I.D. #: 133

JH 00481

FILE # : 4639-512

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EXHIBIT D

**VESTERRA CORPORATION
C/o KOLLER KELLY LLC
1100 Avenel Boulevard
North Wales, PA 19454
(215) 616-0400
Fax (215) 699-9935**

July 15, 2005

Thomas C. Rogers, Esquire
White and Williams LLP
1800 One Liberty Place
Philadelphia, PA 19103-7395

Re: John Hancock Life Insurance Company
Avenel at Montgomery Square

Dear Tom:

This letter is in response to your letter of July 8, 2005. We realize that we have the right to extend the Application. As I stated in my letter of June 20, 2005, we are not now in a position to meet the rental achievement requirements contained in condition 49, and we are not certain that we will be able to satisfy the rental achievement requirement even if we extended the Application for another six months. To do so would require us to enter into over 25 leases per month, which is something that we have not yet achieved at the Property. This is beyond our control.

We have deposited \$960,000 with John Hancock, and we think that amount far exceeds the amount required to compensate them for their Costs and damages. If you have any questions, please call me at 215-605-7770.

Sincerely,

James R. Koller